# City of Willoughby Hills

#### Interoffice Memo

Date:

Wednesday, January 10, 2018

To:

Council President Fellows, Council Members and Council Clerk

From:

Robert M. Weger, Mayor/Safety Director

Subject:

Veto on Ordinance 2017-88 Due to Concerns on Legality and Ethics

On Monday, January 8, 2018, Council passed Ordinance 2017-88 after waiving the Three Reading Rule and declaring an emergency.

I hereby veto the passage of this Ordinance by Council for the following reasons:

- 1) I incorporate, as fully written, my veto on Ordinance 2017-70 dated October 12, 2017, objecting to Council's appointment of Stephen L. Byron as the Acting Law Director for the City of Willoughby Hills.
- 2) The third "WHEREAS" in this Ordinance is not truthful. It states "Council finds and determines that it was not properly advised by the former Law Director for the City relative to the representation and negotiation aspects of the CBA." I have provided copies of the emails sent to the Council Clerk and Law Director Lobe stating the requirement of action (either "Accept" or "Reject") by Council within a 30-day time period. In addition, I have emails from both the Council Clerk and the Finance Assistant, indicating that there would be "no meetings in August", which would have delayed the 30-day window. In a haste to appoint Laura Pizmoht, Council met on August 13 and August 14, 2017, starting the clock once again as it relates to the Union contract. Council never notified me or Law Director Lobe of the Special Meetings of Council. The Personnel Relations Committee recommended rejection of the Union contract on July 28, 2017, yet Council never acted on that recommendation. As a matter of law, I, as Mayor, have the sole authority for the formation of the Collective Bargaining Agreement (CBA) and exercised my privilege in the best interests of the city. Council has no authority in this regard. Knowing the 30-day deadline, Council should have simply "rejected" the Contract during one of these two meetings, which would have brought the Contract back to negotiations. Instead, it became law after the 30-day time period in accordance with ORC 4117.10B.
- 3) Pursuant to the law and our Charter, I, as Mayor, have the exclusive right and authority to appoint counsel for matters involving the union. It is NOT a legislative authority. Council simply approves expenditures and is not permitted, as a matter of law, to take any other action or involvement.

- 4) Further, I do not believe there is merit in the claims of "collusion" with Union representatives in the formation of and negotiation with the AFSCME Collective Bargaining Unit. I do not believe that it is advisable to "pursue a claim of legal malpractice against the City's former Law Director." Council was advised of the 30-day time limit to accept or reject the contracts, which they chose not to honor. To reiterate, I believe these are frivolous claims resulting in frivolous legal expenditures.
- 5) This Ordinance provides for Stephen Byron's (who I terminated on November 30, 2017) recommendations. He has never communicated with either me or the Finance Director as to the cost of the engagement of Joseph N. Gross of Benesch, Friedlander, Coplan and Aronoff, LLP or any other individual or firm. In fact, Council has now asked me to accept the engagement and fees of this firm, which I had been censored from during the interview process. There are no limits put on this firm to control costs and it could virtually "bankrupt the City." This, along with the current arrangement Council has made with Mr. Byron and Walter Haverfield, could exceed the amount in the City appropriations for legal expenditures.
- 6) Stephen Byron's appointment by Council through Ordinance 2017-70 is still under scrutiny by the Court. He is not recognized by me as our Acting Law Director, as I appointed Michael P. Germano on October 11, 2017.
- 7) We are obligated by Chapter 111 of the Codified Ordinances to indemnify our employees and agents; therefore, we could expect to pay (through USI Insurance) expenses that may be up to \$50,000 per employee/agent by way of the insurance coverage, with the City's deductible being 15% (or possibly \$7,500) per claim.
- 8) Finally, based on the fact that we are currently in year three of a three-year rate guarantee plan with USI, the City is expected to renew the insurance policy in October 2018. Payments made by USI to proceed with legal fees would increase our future premiums with USI or any other company that we would choose to go to bid with. I would not recommend proceeding with this Ordinance, based on the fact that legal fees both through Benesch, Friedlander and USI will exceed the amount of the Collective Bargaining Agreement total of approximately \$52,000 over three years. That is not fiscally responsible or anything I would recommend proceeding with.

In closing, I believe that this investigation will be without merit, will spend massive amounts of money and creates ill will amongst the employees, the City and the residents. The residents will bear the brunt of any legal action. This Collective Bargaining Agreement is estimated to cost roughly \$17,000 per year. The legal fees are certainly expected to exceed that amount by nearly ten times. I strongly veto this Ordinance for the betterment of the City and its residents.

cc: Finance Director Frank Brichacek Acting Law Director Michael P. Germano

## City of Willoughby Hills

### Interoffice Memo

Date:

Thursday, October 12, 2017

To:

Council President Fellows, Council Members and Council Clerk

From:

Robert M. Weger, Mayor/Safety Director

Subject:

Veto on Ordinance 2017-70 Due to Concerns on Legality and Ethics

On Thursday, September 28, 2017, I spent the evening with our injured Police officers following the unfortunate shooting that occurred earlier in the day. I was unable to attend the Council meeting that evening and advised Council that I would not be in attendance. I had read the agenda and legislation in advance and did not see any reason why my not being in attendance may be a concern. I made sure to provide Council with the proposal from Zashin and Rich, who I had hoped would be confirmed by Council to handle the pending Unfair Labor Practice filed by the proposed AFSCME Union through the State Employment Relations Board (SERB).

Later that evening, I learned that Steve Byron had been appointed "Acting Law Director" by Council in my absence. This was very disconcerting to me as it was not an item on the agenda, the Ordinance was not included with the other Ordinances that were to be voted on that evening, and I was not given the respect or consideration as Mayor of the City of Willoughby Hills that it was Council's intent to act on this in my absence. Mainly, however, my concern about this illegal action by Council is its blatant violation to our Charter and Ohio Law.

I have outlined Council's violations to Charter and Ohio Law as follows:

Mayor's Authority for the Appointment was Illegally Ignored by Council:

<u>Charter Provision 2.11 – Duties and Responsibilities:</u> "Mayor shall be the chief executive officer and the head of the administrative branch of the Municipal government and shall perform all duties and may exercise all privileges and authority prescribed for him in this Charter, or by the Constitution and laws of the United States and the State of Ohio, including authorities of a judicial nature."

<u>Ohio Revised Code 733.03 – General Powers of Mayor in Cities:</u> "The Mayor shall be the chief conservator of peace within the city. He may appoint and remove the director

of public service, the director of public safety, and the heads of the sub-departments of public service and public safety, and shall have other powers and perform such other duties as are conferred and required by law."

#### Mayor's Authority for Salary Recommendations:

<u>Charter Provision 2.27 – Salary Recommendations:</u> "Though Council has the power to fix salaries as defined in Section 3.32, the Mayor shall have the duty and responsibility to recommend to Council the amount of pay for various positions..."

The proposed salary of \$10,000 per month equals to \$120,000 per year, but there are additional rates of hourly representation. The former Law Director's pay includes retainer, extra billing, litigation, and Union matters was:

	2017	<u>2016</u>	<u>2015</u>
Retainer	\$19004	\$26400	\$26400
Non-Retainer	\$26327	\$34631	\$39505
Total	\$45331	\$61031	\$65905

Council's agreement to pay this individual and the law firm \$120,000 in retainer plus an additional \$250 per hour for non-retainer hours worked (compared to Law Director Lobe's \$95/hr. non-litigation rate and \$105/hr. litigation rate) will add up to be probably triple the amount we were previously paying, and well over what was appropriated.

#### Council Does Not Have Authority to Make the Appointment:

<u>Charter Provision 3.31 – Powers of Council:</u> "The Council shall enact any and all legislation deemed necessary for the preservation of the safety and welfare of the community and provide for the orderly and desirable growth of the community for the efficient and orderly operation of the local government. The procedures for enacting this legislation shall follow the laws of the State of Ohio and any additional stipulations as found in Article VI of this Charter."

The "hiring" of Steve Byron as "Acting Law Director" could certainly not have been for the "safety and welfare" of our community as the Ordinance detailing his negotiated retainer responsibilities totally exclude "litigation, negotiations with City Union workers or other matters requiring more than 10 hours per month."

Ohio Revised Code 731.05 Powers of Legislative Authority: "The powers of the legislative authority of a city shall be legislative only, it shall perform no administrative duties and it shall neither appoint nor confirm any officer or employee in the city government except those of its own body..."

<u>Charter Provision 3.25 The Clerk and Other Employees:</u> "The Council shall appoint a Clerk of Council and such other employees of the Council as it deems necessary." An "Acting Law Director" or "Law Director" is not an employee of the Council!

<u>Charter Provision 3.32 Fixing of Salaries:</u> "Council shall by ordinance fix the salary or compensation of every officer and employee of the Municipality."

This is done upon the Mayor's recommendation with the authority given to him in Section 2.27.

There is nothing in Article III of our Charter to give authority to Council to appoint, except 3.25 which names the Clerk and other such employees of Council. The Law Director or Acting Law Director is NOT an employee of Council.

 Council did not have the authority to appoint Mr. Byron. Also, Mr. Byron admitted that he prepared the Ordinance for Council approval, but he did not have the authority to do so.

<u>Charter Provision 4.31 The Law Director:</u> "The Department of Law shall be administered by a Law Director, who shall ben an attorney-at-law admitted to practice in the State of Ohio, and shall be appointed by the Mayor.

<u>Charter Provision 4.32 Duties & Responsibilities:</u> "The Law Director shall prepare all contracts, bonds and other instruments in writing in which the Municipality is concerned..."

Ohio Revised Code 733.51 Powers & Duties of the City Director of Law: "The City Director of Law shall prepare all contracts, bonds and other instruments in writing in which the city is concerned..."

In addition to the Charter and State Law violations, I believe a potential illegal violation of Executive Session by this Council transpired based on the following facts:

- There was no copy of the ordinance or draft of the ordinance presented prior to Executive Session.
- When Council voted to go into Executive Session, Council did not name the attendees to be a part of the Executive Session.
- For some reason, without mentioning Steve Byron by name, Steve Byron went in to Executive Session, though not a part of the formal motion.

9:43 p.m., place a copy or copies of Ordinance 2017-70 at the Council President's place. The document had the "blanks" filled in, with Steve Byron of Walter Haverfield firm being named on the document. This was while Council was still in Executive Session, where no decision should have been made. Did Steve Byron go to the Clerk's office to prepare this document when he disappeared from the video? At 10:22 p.m., Council President Fellows returned from Executive Session to her seat, where the completed ordinance had earlier been placed by Council Clerk Savage. At 10:30 p.m., Council President Fellows passed the document to Councilwoman Majka, who passed the document on for distribution to Councilman Fiebig, Councilman Plecnik and Councilwoman Pizmoht. At 10:32 p.m., Council resumed the meeting from Executive Session, with Council President Fellows indicating that "it would be irresponsible not to have legal counsel with so many legal challenges", even though the imminent challenge of the Unfair Labor Practice would not be handled by the representative Council chose (Mr. Byron). After having the contract in his position for a full thirty-seven (37) seconds, Councilman Plecnik put the document down, as if he had read it in its entirety. At 10:34 p.m., Council President Fellows read the ordinance, with Councilman Fiebig immediately thanking her for directing "the Council Clerk to prepare the ordinance for a vote." When did she do this? It was never on the video. Was a decision made in Executive Session? At 10:36 p.m., the Ordinance was adopted, having waived the two-day notification and three-reading rule, just six minutes after Council President Fellows passed the Ordinance to Council to read. I believe Sunshine Laws were violated and the unethical way this was passed is clearly suspect and certainly not putting "Residents First."

The meeting video in our possession clearly shows the Council Clerk, at approximately

- This document was never put on the agenda. When Council recessed to Executive Session, it did not advise the public that another ordinance was being considered. Instead, after a majority of the public left and over 40 minutes of silence are on the tape, Council returns from Executive Session to announce to the "public" that Mr. Byron had been chosen as the City's Acting Law Director.
- While I had provided a contract from Zashin and Rich for Council's review in Executive Session, Council returned to make no mention of consideration of the contract. This recommendation was made to Council to handle the SERB Union matter. The contract (retainer) provided to Mr. Byron would not have handled this matter (as noted in Section 3h), but it would have been referred for an hourly rate under the contract. Also, Councilman Plecnik denied that he knew of the Unfair Labor Practice, but indeed I had communicated the information to all of Council, along with the complete contract from Zashin and Rich.

- If the Unfair Labor Practice item was something that Council considered "emergency" in nature, it would not have been handled by Mr. Byron.
- Section 4 of the Ordinance for Mr. Byron violates the Public Records Act. "Council will determine what will be released as Public Record." Council does not have the authority to do this.
- Section 9 of the Ordinance indicates that Council "adopted the Ordinance in an Open Meeting" when the video tape clearly shows how the legislation was prepared and distributed, which was not in an open meeting format.

Since Mr. Brichacek was excused from the Executive Session, the financial consideration of how to pay for the contract being offered to Mr. Byron was never reviewed. I personally never recommended any salary amount for this, which is my responsibility under Charter Provision 2.27. In addition, I believe Council was reckless in approving this expenditure without the proper appropriation or budget consideration.

In closing, I hereby veto Ordinance 2017-70 as it violates the spirit and letters of our Charter, City Ordinances and separation of power on multiple instances.

cc: Finance Director Frank Brichacek
Attorney Steve Byron of Walter Haverfield, LLC
County Prosecutor Chuck Coulson
Attorney Todd Hunt of Walter Haverfield, LLC
Attorney Ralph Spitaleri of Walter Haverfield, LLC
Ohio Ethics Commission
State Auditor David Yost
Attorney General Mike DeWine
Cleveland.com
News-Herald

NANCY E. FELLOWS President of Council City of Willoughby Hills

JOHN PLECNIK Vice President of Council

VICTORIA ANN SAVAGE, CMC Clerk of Council

#### **ORDINANCE NO. 2017-88**

Council
CHRISTOPHER L. BIRO
DAVID M. FIEBIG
CHRISTOPHER HALLUM
JANET MAJKA
LAURA PIZMOHT

AN ORDINANCE AUTHORIZING AND DIRECTING THE ACTING MAYOR AND FINANCE DIRECTOR TO ENTER INTO AN AGREEMENT WITH JOSEPH N. GROSS AND BENESCH, FRIEDLANDER, COPLAN AND ARONOFF, LLP, AS SPECIAL COUNSEL FOR THE CITY OF WILLOUGHBY HILLS, FOR THE PURPOSE OF REPRESENTING THE CITY IN MATTERS RELATED TO THE FORMATION OF AND NEGOTIATION WITH A CERTAIN COLLECTIVE BARGAINING UNIT, AND TO TAKE SUCH ACTIONS AS ARE NECESSARY TO SET ASIDE THAT COLLECTIVE BARGAINING AGREEMENT IF IT IS DETERMINED THAT MUNICIPAL OFFICIALS COLLUDED WITH UNION REPRESENTATIVES, AND/OR TO PURSUE A CLAIM OF LEGAL MALPRACTICE AGAINST THE CITY'S FORMER LAW DIRECTOR, AUTHORIZING THE COUNCIL PRESIDENT TO SERVE AS ACTING MAYOR IN ORDER TO ADMINISTER THE PROVISIONS OF THIS ORDINANCE, AND DECLARING AN EMERGENCY.

WHEREAS, this Council has concerns regarding the formation, composition and negotiation of a collective bargaining agreement ("CBA") that would be between the City of Willoughby Hills and Ohio Council 8, American Federation of State, County and Municipal Employees, and possible improper actions by City officials and employees; and

WHEREAS, while Council respects the rights of City employees to collectively bargain, and will insist that those rights are preserved and respected, this Council is duty-bound to make certain that collective bargaining agreements which bind the City are entered into properly, and specifically that all aspects of the CBA are lawful and proper; and

WHEREAS, this Council finds and determines that it was not properly advised by the former law director for the City relative to the representation and negotiation aspects of the CBA; and

WHEREAS, the Council of the City of Willoughby Hills desires to engage special legal counsel who specializes in labor matters and attorney malpractice claims in order to investigate the process by which a collective bargaining unit was formed, and tentative agreement Ohio Council 8, American Federation of State, County and Municipal Employees was negotiated and presented to this Council; and

WHEREAS, Council requested special legal counsel, namely Joseph N. Gross, of Benesch, Friedlander, Coplan and Aronoff, LLP, to represent the City in the matters related to the formation of the union and negotiation by the City with Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO; and

WHEREAS, Acting Law Director Stephen L. Byron has recommended that the requested engagement be approved; and

WHEREAS, based upon the recommendation of the Acting Law Director, this Council has determined it to be in the best interest of the City to engage the legal services of Joseph N. Gross, of Benesch, Friedlander, Coplan and Aronoff, LLP, to serve as special counsel to the City in litigation to set aside an agreement and to settle labor negotiations; and

WHEREAS, pursuant to Article II, Section 2.4 of the Charter of the City of Willoughby Hills: "When the Mayor is unable to perform his duties for any cause, the Council President shall serve as Acting Mayor.

WHEREAS, this Council finds and determines that Robert W. Weger is implicated in the possible misconduct by municipal officials in this matter, and is therefore "\*\*\* is unable to perform his duties \*\*\*" as that term is used in Article II, Section 2.4 of the Charter of the City of Willoughby Hills; and

WHEREAS, this Council desires to formally declare that Robert W. Weger shall not be permitted to interfere in the engagement of special counsel, so Council President Nancy E. Fellows is declared to be the Acting Mayor for the purpose of the administration of this ordinance and the execution and administration of the agreement authorized hereunder.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILLOUGHBY HILLS, COUNTY OF LAKE, STATE OF OHIO THAT:

SECTION 1. Joseph N. Gross and Benesch, Friedlander, Coplan and Aronoff, LLP, located at 200 Public Square, Cleveland, Ohio 44114-2309 are hereby authorized to represent the City in matters related to the formation of the collective bargaining unit, and the collective bargaining agreement negotiated with, Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO; and to pursue any actions warranted by the evidence disclosed after an appropriate investigation, and to investigate and pursue a legal malpractice claim against the former law director of the City if the investigation of the facts warrants such a claim.

SECTION 2. Services for the above-captioned matter will pursuant to the agreement which is appended hereto and incorporated herein.

SECTION 3. That Council President Nancy E. Fellows is declared to be Acting Mayor solely for the purpose of administering this ordinance and executing and administering the agreement authorized hereunder, pursuant to Article II, Section 2.4 of the Charter of the City of Willoughby Hills, because Robert M. Weger is unable to perform his duties because of conflict of interest concerns, i.e. he is implicated in the wrongful conduct which is the subject of the investigation and further actions authorized hereunder.

SECTION 4. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were held in compliance with all legal requirements, including Chapter 107 of the Codified Ordinances of the City of Willoughby Hills.

SECTION 5. This Ordinance constitutes an emergency measure in that the same provides for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the City of Willoughby Hills, and further, so that the City's interests may be immediately protected in pending administrative action and/or imminent litigation; wherefore, this Ordinance shall take effect and be in force effective immediately, after its passage by Council and signature of the Mayor, or as otherwise provided by the Charter of the City of Willoughby Hills.

PASSED:, 2017	
Submitted to the Mayor for his approval	Nancy E. Fellows  President of Council
on this, 2017	Approved by the Mayor
ATTEST:	, 2017
Victoria Ann Savage, CMC Clerk of Council	Robert M. Weger Mayor

ORDINANCE NO. 2017-88
Letter of Agreement
Page 3 of 6



#### Benesch, Friedlander, Coplan & Aronoff LLP Terms and Conditions of Engagement

This document contains the terms and conditions (the "Terms and Conditions") under which you are engaging Benesch, Friedlander, Coplan & Aronoff LLP to provide legal services. The Terms and Conditions apply to all matters for which you might now or in the future request our assistance and as to which we agree, unless, of course, you and we agree to revised Terms and Conditions regarding this or any other matter for which you engage us.

#### Communications and Confidentiality

The Firm will keep you informed of the status of the matter or matters for which you are engaging us and we will consult with you when we believe it necessary or appropriate. In the event that you need to reach us and the person sought is unavailable, please leave a message for the person concerned disclosing the nature and urgency of the call.

You understand and agree that, in order for us to represent you effectively, it is necessary for you to assist and cooperate with us during this engagement. You agree to be available to discuss issues as they arise, to attend in person or by conference call and participate in meetings and other activities in connection with our representation, and to provide complete and accurate information and documents to us on a timely basis. Your non-cooperation will be grounds for the Firm's withdrawal from representing you, and thus, it is essential that we maintain open communications.

As lawyers, we are always mindful of our central obligation to preserve the precious trust that our clients repose in us – their secrets and confidences. To that end, it is important that we agree from the outset what kinds of communications technology we will employ in the course of this engagement. For instance, depending on the degree of security that you wish to maintain, it may not be appropriate to use email or to speak using cellular telephones (or at least not to do so where substantive information is being discussed). Similarly, the exchange of documents using the Internet, or even direct computer-to-computer data transfer, may involve some risk that information will be retrieved by third parties with no right to see it. Even the use of fax machines can cause problems if documents are sent to numbers where the documents sit in open view. Nevertheless, we will use high tech communication devices such as cellular telephones, the Internet, unencrypted e-mail and fax machines, unless you instruct us not to use one or more of these devices, generally or in specific instances.

#### Whom Do We Represent?

Our client is the person or entity addressed in the letter accompanying these Terms and Conditions, even though in certain instances the payment of our fees may be the responsibility of others. Throughout these Terms and Conditions, and in the accompanying letter, "you" refers to such individual or entity.

Unless expressly stated in our letter, or unless otherwise required by law, our representation does not extend to any of your affiliates and we do not assume any duties with respect to your affiliates. The word "affiliates" includes parent, entities, subsidiaries, sister corporations, partnerships in which you are a partner, your partners, any entities in which you own an interest, or your owners, employees, officers, directors, members, trustees, shareholders, or, if you are an individual, your spouse, children or other relatives. If you are a governmental entity, our representation does not extend to other governmental entities or agencies, departments, bureaus, or boards. If you are a trustee, only you are our client and only in your capacity as such. The beneficiaries of the trust are not our clients. If you provide us with any

www.beneschlaw.com



Joseph N. Gross 200 Public Square, Suite 2300 Cleveland, Ohio 44114-2309 (216) 363-4500 Direct Dial: (216) 363-4163 Fax: (216) 363-4588 jgross@beneschlaw.com

December 19, 2017



City of Willoughby Hills Willoughby Hills City Hall 35405 Chardon Road Willoughby Hills, OH 44094 Attn: Stephen L. Byron, Law Director

Dear Mr. Byron:

Benesch, Friedlander, Coplan & Aronoff LLP is pleased to have the opportunity to represent the City of Willoughby Hills as special counsel for labor-related matters and to advise and potentially represent the City on a legal malpractice action against its former law director. Thomas G. Lobe. Please note that our engagement does not include any tax advice or tax analysis, which we do not believe the City needs for this matter.

Consistent with the rules by which we are bound, we require a written engagement agreement with all new clients, as well as for certain matters that we undertake for existing clients. The engagement agreement between the City and us consists of this letter and the accompanying Terms and Conditions of Engagement (the "Terms and Conditions"). The engagement agreement describes our responsibilities to each other and sets forth certain other matters regarding the attorney-client relationship.

To avoid any misunderstanding as to our billing and collection practices as to this matter and as to future matters in which we may represent the City, the Terms and Conditions describe the basis on which we will provide and bill for such legal services. In addition to fees, our statements will include charges for expenses incurred, as more fully described in the Terms and Conditions. Should you have any questions regarding these practices, please call us immediately.

Please do not hesitate to call us to discuss any questions you may have regarding the engagement agreement.

In conformance with the Firm's policy, we cannot commence or continue work on this engagement until we have received the City' acceptance of this engagement agreement as described above.

If you have any questions about or do not agree with one or more of the Terms and Conditions, please advise. Thank you.

www.beneschlaw.com

ORDINANCE NO. 2017-88 Letter of Agreement Page 2 of 6

City of Willoughby Hills December 19, 2017 Page 2

We look forward to a mutually beneficial relationship.

Very truly yours,

BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP Jack 17 June Joseph N. Gross

AGREED:	
Dated:, 2018	
CITY OF WILLOUGHBY HILLS	
By:	
Encl.	
CERTIFICATE	OF AVAILABLE FUNDS
the moneys required to meet the obligations Agreement have been lawfully appropriated	or of the City of Willoughby Hills, hereby certify that is of the City of Willoughby Hills under the foregoing d for such purposes and are in the treasury of the City of collection to an appropriate fund, free from any
Dated:, 2018	
	CITY OF WILLOUGHBY HILLS
	By: Frank Brichacek, Finance Director

confidential information regarding any of your affiliates, we will honor such confidences in a manner consistent with our ethical duties to you as our client. No one except you is entitled to rely on any advice or other communication we give to you, unless we otherwise mutually agree, in writing.

#### Conflicts of Interest

We represent and have represented many clients over the years on a variety of legal matters. As a result, you possibly may find yourself in a position adverse to another of our clients in litigation, business negotiations, or some other legal matter in which we do not represent you and which is unrelated to this engagement. Accordingly, we include the following:

You agree that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for you, even if the interests of such clients in those other matters are directly adverse to your interests. We agree, however, that your prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as a result of our representation of you, we have obtained proprietary or other confidential information of a non-public nature, that, if known to such other client, could be used in any such other matter by such client to your material disadvantage. In similar engagement agreements with a number of our other clients, we have asked for similar agreements to preserve our ability to represent you.

#### Our Fees

Statements generally are rendered on a monthly basis for legal services rendered during the previous month. In determining fees, the major factor is usually time expended. We assign hourly rates for each member of our legal staff based on years of experience, areas of expertise and level of professional attainment.

Our current billing rates for those attorneys we presently expect to work on your matter range from \$245 an hour for the most junior associate to \$465 an hour for Joseph N. Gross, who is a partner of our firm. In an effort to reduce overall legal costs, we utilize paralegal personnel whenever appropriate. Time devoted by such paralegal personnel to client matters is currently charged at a billing rate of \$230 per hour. As a courtesy to the City, our firm will take a 10% discount on all fees associated with this matter. As a further courtesy, Joseph N. Gross will take a 15% discount on his rate of \$465 per hour, reducing it to \$395 per hour.

We will use our discretion in staffing in order to provide proper legal representation. Billing rates for both attorneys and paralegal personnel are, from time to time, reviewed and adjusted on a firm-wide basis and may change during the course of our engagement. Our time charges are based on quarter hour increments.

Although we may from time to time, at a client's request, furnish estimates of legal fees and other charges that we anticipate will be incurred, these estimates are by their nature inexact (due to unpredictable circumstances) and, therefore, the actual fees and charges ultimately billed may vary from such estimates.

Payment to the Firm is expected upon receipt of our statement. If at any time during our relationship you find that you are unable to meet the payment arrangement, we urge you to contact us immediately.

#### Charges for Expenses

In addition to fees, our statements will include charges for expenses, including but not limited to photocopying, travel (transportation, lodging and meals), computerized legal research, facsimiles sent from our office, messenger and courier services, long distance telephone charges, and filing fees. We will be happy to provide you with a breakdown and explanation of the various rates charged for these items, at your request. In general, such expenses are billed to you to reflect our direct out-of-pocket expense. Certain of these expenses may include a surcharge reflecting overhead, as well as other factors. Often, however, certain client charges of particular magnitude, such as court reporter fees, costs incurred in compliance with electronic discovery, expert witnesses, consultants, major travel expenses, and title examinations, necessitate direct payment by the client. In these situations, you will be billed directly on our instructions to the providers or we will send the provider's statement to you for direct payment. As is sometimes the case, expense charges may not be current at the time of billing, whether final or interim, because of delays in the receipt of third-party bills and the posting of accounts. Remaining expense charges, if any, will be billed at a later date.

#### Payment Obligations

You acknowledge that the law provides us with an attorneys' lien on any judgment, decree, or award that we may obtain for you, but only to the extent of any proceeds therefrom and only in an amount sufficient to pay our fees and other charges related to our obtaining the judgment, decree, or award. However, you also acknowledge that, whether or not there are any proceeds resulting from such judgment, decree, or award, you nevertheless are obligated to pay our fees and other charges for our services in the matter, unless we have agreed otherwise in writing.

#### Termination of Representation

Our relationship may be terminated by either of us by giving written notice to the other party. If you terminate this representation at any time, you will have the obligation to pay any outstanding and final billing from us. We may withdraw from this representation at any time consistent with applicable rules of ethical conduct, on reasonable notice, without your consent. Our withdrawal may be based upon, but is not limited to: (a) your failure to cooperate with us as provided above; (b) your failure to pay any of our bills when due; (c) any fact or circumstance that would render our continuing representation unlawful or unethical; (d) your failure to follow our advice; or (e) when we have reached an irreconcilable difference of views on the handling of your matter(s). Any termination by us of our representation will be subject to such approval as may be required from any court or other body before which we may be appearing on your behalf.

In the event of termination of our relationship, you agree that you will take all necessary steps to free us of any obligation to perform further, including the execution of any documents necessary or reasonably requested to complete our withdrawal.

When we complete the services you have retained us to perform, our attorney-client relationship for that matter will be terminated. Unless previously terminated by the completion of our services or otherwise, our representation will terminate no later than the date of our final statement for services and expenses for the particular matter. If you later retain us to perform further or additional services, our attorney-client relationship will commence again, subject to our original engagement agreement, unless we change its terms, in writing, at that time.

After termination of our attorney-client relationship regarding any particular matter, changes may occur in applicable laws that could impact your future rights and liabilities. Unless you actually engage us, in writing, to provide additional advice on issues arising from that matter after its completion, we will have no continuing obligation to advise you with respect to future legal developments.

#### Client Files

When we no longer represent you in a matter, or at your request at any time during the course of our representation, we will take steps, to the extent reasonably practicable, to promptly deliver to you or to whomever you designate, in writing, your papers and property to which you are entitled. As to your client files, this means that you are entitled to copies of all correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert reports, and other items reasonably necessary to your representation. The foregoing obligation, however, is also subject to any attorney lien under applicable law that may be available to us to secure payment of our outstanding fees and other charges, and is also subject to our right, after completion of any matter for you, to destroy your files that we have maintained for such matter, so long as such destruction is consistent with our then current file retention policies and is consistent with applicable law and ethical requirements. You agree that we will be entitled to be paid at our then current rates for all attorney and paralegal time spent and that we will be entitled to be reimbursed for all expenses incurred in connection with such delivery of your personal property, except for copying costs.

#### Entire Agreement

The engagement agreement represented by the Terms and Conditions and the accompanying letter supersedes all prior or other contemporaneous written or oral agreements and understandings between us and constitutes the entire agreement between us. The engagement agreement may be modified only in a writing signed by you and by us. You acknowledge that no promises have been made to you other than those contained in the engagement agreement.

#### Governing Law

Unless otherwise specified in the accompanying letter, all questions arising under this engagement agreement or concerning rights and duties between us will be governed by the law of the jurisdiction in which the Benesch attorney sending you this engagement agreement principally practices, excluding choice of law provisions that might select the law of a different jurisdiction. If any provision of the engagement agreement is held by any court or tribunal to be unenforceable, the remainder of the engagement agreement shall not be affected thereby and shall be enforced.

#### Miscellaneous

You understand, of course, that we cannot guarantee the outcome of any aspect of this or any other matter as to which we may represent you. Our services and advice will be based on the law at the time of such services and advice and on the extent of our actual knowledge of the applicable facts.